

## SECTION VIII

### DISCLOSURE AND USE OF PROGRAM INFORMATION

#### 8.1. General

- 8.1.1. Both Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Program. The Participants intend to acquire sufficient Program Information and rights to use such information to enable the development of technology and prototype equipment. The nature and amount of Program Information to be acquired will be consistent with the objectives stated in Section II (Objectives) and Section III (Scope of Work). Transfer of such Information to Contractors will be consistent with each Participant's export control laws and regulations.

#### 8.2. Government Program Foreground Information

- 8.2.1. Disclosure: All Program Foreground Information generated by a Participant's military personnel or civilian employees will be disclosed promptly and without charge to both Participants.
- 8.2.2. Use: Each Participant may use or have used all Government Program Foreground Information without charge for Government Purposes. The Participant generating Government Program Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

#### 8.3. Government Program Background Information

- 8.3.1. Disclosure: Each Participant, upon request, will disclose promptly and without charge to the other Participant any relevant Government Program Background Information generated by its military personnel or civilian employees, provided that:
  - 8.3.1.1. Such Program Background Information is necessary to or useful in the Program, with

the Participant in possession of the information determining, after consulting with the requesting Participant, whether it is "necessary to" or "useful in" the Program;

8.3.1.2. Such Program Background Information may be made available without incurring liability to holders of proprietary rights;

8.3.1.3. Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

8.3.1.4. The furnishing Participant determines that any disclosure or transfer of such Government Program Background Information to Contractors is consistent with its export control laws and regulations.

8.3.2. Use: Government Program Background Information furnished by one Participant to the other may be used without charge by or for the other Participant for Program Purposes. However, subject to proprietary rights held by entities other than the Participants and subject to the provisions of paragraph 12.2. of Section XII (Third Party Sales and Transfers), such Project Background Information furnished by a Participant may be used for Government Purposes by the other Participant, without charge, when such information is necessary for the use of the Project Foreground Information. The furnishing Participant, in consultation with the other Participant, will determine whether the Project Background Information is necessary for the use of the Project Foreground Information. The furnishing Participant will retain all its rights with respect to such Program Background Information.

#### 8.4. Contractor Program Foreground Information

8.4.1. Disclosure: Program Foreground Information generated and delivered by Contractors will be disclosed promptly and without charge to both Participants. Program Foreground Information

generated by a Contractor, but not delivered, will be made available upon the request of the Participants at the cost of the Information's conversion into the prescribed form and the cost of reproduction and delivery as permitted in accordance with the provisions of the applicable Contract.

- 8.4.2. Use: Each Participant may use or have used without charge for its Government Purposes all Contractor Program Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Program Foreground Information will also retain its rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Program Foreground Information will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

#### 8.5. Contractor Program Background Information

- 8.5.1. Disclosure: A Contracting Participant will make available to the other Participant promptly and without charge all Contractor-generated Program Background Information which is delivered under Contracts awarded in accordance with this MOU. Any other Program Background Information which is generated by Contractors under Contracts awarded outside of this MOU will be made available promptly and without charge to the other Participant upon its request, provided the following provisions are met:

- 8.5.1.1. Such Program Background Information is necessary to or useful in the Program, with the Participant in possession of the information determining, after consultation with the other Participant, whether it is "necessary to" or "useful in" the Program;
- 8.5.1.2. Such Program Background Information may be made available without incurring liability to holders of proprietary rights;

8.5.1.3 Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

8.5.1.4 The furnishing Participant determines that any disclosure or transfer of such Contractor Program Background Information to Contractors is consistent with its export control laws and regulations.

8.5.2. Use: All Program Background Information delivered by Contractors under Contracts awarded in accordance with this MOU may be used by or for a receiving Participant without charge for Program Purposes, subject to any restrictions by holders of proprietary rights other than the Participants, and for Government Purposes, subject to such fair and reasonable terms as may be necessary to be arranged with the Contractor. Any other Program Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by or for the other Participant for Program Purposes, subject to any restrictions by holders of proprietary rights other than the Participants; also, when necessary for the use of Project Foreground Information, such other Program Background Information may be used for Government Purposes, subject to such fair and reasonable terms as may be necessary to be arranged with the Contractor. The furnishing Participant, in consultation with the other Participant, will determine whether such other Program Background Information is necessary for the use of Project Foreground Information. The furnishing Participant will retain all its rights with respect to Program Background Information.

#### 8.6. Alternative Uses of Program Information

8.6.1. The prior written consent of each Participant will be required for the use of Program Foreground Information for purposes other than those provided for in this MOU.

- 8.6.2. Any Program Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.

#### 8.7. Proprietary Program Information

- 8.7.1. All Program Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information.
- 8.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, signed in Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to the communication of proprietary Information between the Participants under this MOU.

#### 8.8. Patents

- 8.8.1. Each Participant will include in all its Contracts for the Program a provision governing the disposition of rights in regard to Program Inventions and Patent rights relating thereto, which either:
  - 8.8.1.1. Provides that the Participant will hold title to all such Program Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor concerned; or
  - 8.8.1.2. Provides that the Contractor will hold title (or may elect to retain title) for such Program Inventions together with the right to make Patent applications for the same, while securing for the Participants a license for the Program Inventions, and any Patents thereto, on provisions in compliance with the provisions of paragraph 8.8.2. below.

- 8.8.2. In the event that a Contractor holds title (or elects to retain title) for any Program Invention, the Contracting Participant will secure for the other Participant non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Program Invention for Government Purposes.
- 8.8.3. The provisions of subparagraphs 8.8.4. through 8.8.8. below will apply in regard to Patent rights for all Program Inventions made by the Participant's military personnel or civilian employees, including those within Government-owned facilities, and for all Program Inventions made by Contractors for which the Contracting Participant holds title or is entitled to acquire title.
- 8.8.4. Where a Participant has or can secure the right to file a Patent application with regard to a Program Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Program Invention. The Participant which has or receives title to such Program Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, Patent applications covering that Program Invention. If a Participant, having filed or caused to be filed a Patent application, decides to stop prosecution of the application or ceases to maintain a Patent which has been granted or issued on that application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution, or maintain the Patent as the case may be.
- 8.8.5. Each Participant will be furnished with copies of the Patent applications filed and Patents granted with regard to Program Inventions.
- 8.8.6. Each Participant will grant to the other Participant a non-exclusive, irrevocable, royalty-free license under its Patents for

Program Inventions, to practice or have practiced the Program Inventions throughout the world for Government Purposes.

- 8.8.7. Patent applications to be filed under this MOU which contain Classified Information, will be protected and safeguarded in accordance with the requirements contained in the Agreement for Interchange of Patent Rights and Technical Information, dated 19 January 1953, and its implementing procedures.
- 8.8.8. Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under the Program. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same ratio for cost sharing as established in paragraph 5.3. of Section V (Financial Provisions). The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Program of any invention covered by a Patent issued by their respective countries.

## SECTION IX

### CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

- 9.1.1. Such information will be used only for the purposes authorized for use of Program Information as specified in Section VIII (Disclosure and Use of Program Information).
- 9.1.2. Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1., and will be subject to the provisions of Section XII (Third Party Sales and Transfers).
- 9.1.3. Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2., unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked to ensure its "in confidence" nature. U.S. export-controlled information will be marked as "International Traffic in Arms Regulations (ITAR)-Controlled." UK export-controlled information will be marked as "UK Export-Controlled." The Participants will decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information. The appropriate markings for all Controlled Unclassified Information will be reflected in the Project Security Instruction.



9.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION X

### VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel will be required to comply with security regulations of the hosting Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the Program..

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

## SECTION XI

### SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the U.S./UK General Security Agreement dated 14 April 1961, as amended, and including the Security Implementing Arrangement dated 27 January 2003 thereto.

11.2. Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the information relates to this MOU.

11.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 11.8., unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1. The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party except as permitted under the procedures set forth in Section XII (Third Party Sales and Transfers).

11.3.2. The recipient will not use the Classified Information for other than the purposes provided for in this MOU.

11.3.3. The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.

11.4. The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participant of the details of any such occurrences, and of the

final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. The National PMs will prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the Project. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded, and will require that markings for all export-controlled Classified Information will include the applicable export control markings identified in paragraph 9.2 of Section IX (Controlled Unclassified Information). The PSI and CG will be developed by the National PMs within three months after this MOU enters into effect. They will be reviewed and forwarded to the Participants' Designated Security Authorities (DSAs) for approval and will be applicable to all government and Contractor personnel participating in the Project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or Subcontractor of any Classified Information received under this MOU, the DSAs will:

- 11.6.1. Ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.
- 11.6.2. Grant a security clearance to the facility(ies), if appropriate.
- 11.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.
- 11.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU.

11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.

11.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this MOU. These officials will be responsible for limiting access to Classified Information involved in this MOU to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Program.

11.10. Information provided or generated pursuant to this MOU may be classified as high as TOP SECRET. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED.

## SECTION XII

### THIRD PARTY SALES AND TRANSFERS

12.1. The Participants will not sell, transfer title to, disclose, or transfer possession of Program Foreground Information, jointly acquired Program Equipment, or any item produced either wholly or in part from Program Foreground Information to any Third Party without the prior written consent of the Government of the other Participant. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the Government of the other Participant. Such consent will not be given unless the Government of the intended recipient consents in writing with the Participants that it will:

12.1.1. Not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2. Use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

12.2. A Participant will not sell, transfer title to, disclose, or transfer possession of Program Equipment or Program Background Information provided by the other Participant to any Third Party without the prior written consent of the Government of the Participant which provided such equipment or information. The providing Participant's Government will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

## SECTION XIII

### LIABILITY AND CLAIMS

13.1. Claims arising under this MOU will be dealt with under paragraph 1 of the Agreement Concerning Defence Cooperation Arrangements of 27 May 1993. The cost of claims addressed in paragraph 1.(b)(ii) of that Agreement will be shared in the same ratio for cost sharing as established in paragraph 5.3. of Section V (Financial Provisions).

## SECTION XIV

### CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

14.1. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations (including, as to the UK MOD, European Community laws, where appropriate). Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this MOU.

14.2. Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.



## SECTION XV

### SETTLEMENT OF DISPUTES

15.1. Disputes between the Participants arising under or relating to this MOU will be resolved only by consultation between the Participants and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

## SECTION XVI

### GENERAL PROVISIONS

16.1. All activities of the Participants under this MOU will be carried out in accordance with their national laws and regulations, including their export control laws and regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

16.2. No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

## SECTION XVII

### AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION

17.1. Except as otherwise provided, this MOU may be amended by the mutual written consent of the Participants. Annex A (Sample Task Plan) of this MOU may be amended by the written approval of the SC.

17.2. This MOU may be terminated at any time upon the written consent of the Participants. In the event both Participants consent to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions.

17.3. Either Participant may terminate this MOU upon 90 days written notification of its intent to terminate to the other Participant. Such notice will be the subject of immediate consultation by the SC to decide upon the appropriate course of action to conclude the activities under this MOU. In the event of such termination, the following rules apply:

17.3.1. The terminating Participant will continue participation, financial or otherwise, up to the effective date of termination.

17.3.2. Except as to Contracts awarded on behalf of both Participants, each Participant will be responsible for its own Program-related costs associated with termination of the Program. For Contracts awarded on behalf of both Participants, the terminating Participant will pay all Contract modification or termination costs that would not otherwise have been incurred but for the decision to terminate; in no event, however, will a terminating Participant's total financial contribution, including Contract termination costs, exceed that the sum of that Participant's financial contributions as set forth in each of the Task Plans.

17.3.3. All Program Information and rights therein received under the provisions of this MOU prior to the termination will be retained by the Participants, subject to the provisions of this MOU.

17.4. The respective benefits and responsibilities of the Participants regarding Section VII (Program Equipment), Section VIII (Disclosure and Use of Program Information), Section IX (Controlled Unclassified Information), Section XI (Security), Section XII (Third Party Sales and Transfers), Section XIII (Liability and Claims), and this Section XVII (Amendment, Termination, Entry into Effect, and Duration) will continue to apply, notwithstanding termination or expiration of this MOU.

17.5. This MOU, which consists of seventeen (17) Sections and one (1) Annex, will enter into effect upon signature by both Participants and will remain in effect for fourteen (14) years. It may be extended by the written consent of the Participants.